IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 2179 of 2007(H)

OS.249/2001 of II ADDL.SUB COURT,TRIVANDRUM
.....

PETITIONER:

A.VELAYUDHAN PILLAI,
T.C.29/905, VIJAYA BHAVAN,
PALKULANGARA, TRIVANDRUM-24.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENT:

K.VIJAYALAKSHMI,
SUBHA BHAVAN, T.C.NO.29/904/1,
CHEMBAKADA JUNCTION, PALKULANGARA,
TRIVANDRUM.

BY ADV. SRI.K.L.NARASIMHAN
SRI.A.MOHAMMED FAIZAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.2179/2007 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.NO.249/2001 ON THE FILE OF THE SUB COURT, TRIVANDRUM.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT IN O.S.249/2001 ON THE FILE OF THE SUB COURT, TRIVANDRUM.**

EXT.P3: **COPY OF THE DRAFT ISSUES IN O.S.NO.249/2001 ON THE FILE OF THE SUB COURT, TRIVANDRUM.**

EXT.P4: **COPY OF THE JUDGMENT DTD. 8/11/2006 IN WP(C) NO. 29366/06 OF THIS HON'BLE COURT.**

EXT.P5: **COPY OF THE ORDER DTD. 15/12/2006 IN O.S.249/2001 ON THE FILE OF THE IIND ADDL.SUB COURT, TRIVANDRUM.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 2179 OF 2007

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Dated this the 3rd day of December, 2007.

J U D G M E N T

The suit is one for partition whereby the plaintiff is claiming a decree for partition and also for rendition of accounts. A perusal of the plaint would reveal that the plaintiff is claiming joint possession along with the defendant and therefore is paying Court fee under Section 37(2) of the Court Fess Act. As far as rendition of accounts is concerned it was estimated at Rs.15,000/- multiplied it by 9 and had paid Court fee of Rs.1,35,000/-.

2. The Court below considered the matter elaborately. It is the contention of the plaintiff that the plaintiff is in joint possession of the property with the defendant and therefore Section 37(2) will apply. The defendant would contend that the plaintiff is in joint possession and therefore he has to pay the Court fee under Section 37(1). The question whether the plaintiff is in joint possession or whether the plaintiff is out of possession are all

matters which can be decided by the Court only after appreciating and analyzing the evidence. So the plaintiff is bound to pay the Court fee on the basis of the averments in the plaint. When he claims joint possession it is at his risk and the Court at this stage cannot enter into a finding on that. So far as the rendition of accounts is concerned Section 35 only states that in a suit for accounts fees shall be computed on the amount sued for as estimated in the plaint or on Rupees 1,000/- which ever is higher. The plaintiff has estimated Rs.1,35,000/- and the Court fee need be paid only under Section 37(1) of the Act. So, I do not find any illegality, irregularity in the order passed by the Court below. Therefore, the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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